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ABSTRACT

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Interpreting Qualifying Modifiers: Implications for Ethical Decision Making

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Abstract

The Ethical Principles for Psychologists now states, "The modifiers used in some of the standards of this Ethics Code (e.g. reasonability, appropriate, potentiality) are included in the standards when they would (1) allow professional judgment on the part of psychologists, (2) eliminate injustice or inequality that would occur without the modifier, (3) ensure applicability across the broad range of activities conducted by psychologists, or guard against a set of rigid rules that might be quickly outdated" (Introduction and Applicability: pp. 2). Thus, several standards require the inclusion of these purposes for consideration in ethical decision-making. The challenge facing school psychologists will be to identify when these judgments are called for in the new code and to transform them into concrete recommendations that will guide correct conduct.

Interpreting Qualifying Modifiers: Implications for Ethical Decision Making

The language of ethical codes must be both not too specific and not too broad. If the language for a specific standard is too specific it may conflict with appropriate activities authorized in other sections of the code, thus impeding the practice of another specialty of psychology. On the other hand, the enforceable nature of the ethical standards requires some level of specificity so that clear decisions may be rendered regarding alleged ethical violations. If the terms are too broad this function would be limited, thus diminishing the effectiveness of ethics review boards. One way this lexical conundrum has been addressed is to utilize qualifying modifiers (Nagy, 1999). Modifiers qualify the meaning of a word or clause of the Ethics Code. This, unfortunately, is an imperfect solution. Because modifiers must be interpreted they are susceptible to misinterpretation (Koocher & Keith-Spiegel, 1998).

Because modifiers are not necessarily precise, the 2002 Ethics Code now includes some direction for their interpretation. The following is a quote from the Introduction and Applicability section of the code that covers modifiers.

> The modifiers used in some of the standards of this Ethics Code (e.g., reasonably, appropriate, potentially) are included in the standards when they would (1) allow professional judgment on the part of psychologists, (2) eliminate injustice or inequality that would occur without the modifier, (3) ensure applicability across the broad range of activities conducted by psychologists, or (4) guard against a set of rigid rules that might be quickly outdated. As used in this Ethics Code, the term reasonable means the prevailing professional judgment of psychologists engaged in similar activities in similar circumstances, given the knowledge the

psychologist had or should have had at the time. (Introduction and Applicability, APA, 2002).

This introduction provides an explanation of the four purposes of modifiers, some example modifiers to look for when applying the Ethics Code, and a detailed explanation of the *reasonable* modifier. The purpose of this paper is to provide further clarity to the interpretation of qualifying modifiers and to explain how the interpretation of modifiers fits with current approaches to ethical decision making. By having a confident understanding of terms such as *reasonable* or *appropriate* the psychologist will have greater certitude in making everyday ethical decisions and be able to justify said decisions if called into question.

Purpose of Qualifying Modifiers

The 2002 Ethics Code identified four purposes for using qualifying modifiers. This section examines each of these purposes with the intent of clarifying how one would interpret a modifier to achieve the purpose. The first purpose is to "allow for professional judgment on the part of psychologists." This is a responsibility bestowed to the psychologist. It is unequivocal that ignorance of the ethical code is not a defense for unethical conduct (APA, 2002; Fisher, 2003). The responsibility to use professional judgment suggests that poor judgment may not be an adequate defense for unethical conduct either. That is, there must be a clear standard for good professional judgment. The 2002 Ethical Code indicates that psychologists make judgments based "upon established scientific and professional knowledge of the discipline" (Standard 2.04, Basis for Scientific and Professional Judgments). Judgment is also clarified in the Introduction and Applicability section as being the "prevailing professional judgment of psychologists engaged in similar activities." This is similar to the standard that applies to expert testimony in forensic cases as defined under *Daubert* in which a statement must be "generally accepted"

within the applicable field (Elias, 1999). Judgments can easily be influenced by secondary gains and a lack of objectivity (Koocher & Keith-Spiegel, 1998). Therefore, when applying professional judgment related to the ethical code the psychologist must be "alert to and guard against personal, financial, social, organizational, or political factors that might lead to misuse of their influence" (Principle A: Beneficence and Nonmaleficence). When psychologists interpret a qualifying modifier using professional judgment it is done so without undo influence and is based upon established, generally-accepted scientific and professional knowledge.

The second purpose of modifiers is to "eliminate injustice or inequality that would occur without the modifier." Justice is a new principle in the 2002 Ethics Code and has to do with all people having "access to and benefit from psychology" (Principle D: Justice). Fisher (2002) suggested that the modifier *appropriate* is utilized for this purpose to indicate when an action is required, prohibited, or permitted based on a characteristic of an individual. This notion is supported by Beauchamp and Childress (2001) in which justice is described as "fair, equitable, and *appropriate* [italics added] treatment in light of what is due or owed" (p. 226). They further state that injustice is an act or omission that "denies people benefits to which they have a right or distributes burdens unfairly." The 2002 Ethics Code, however, expands on the above views of justice and includes the concept of *equality*. Individuals have "equal quality in the processes, procedures, and services being conducted by psychologists." In school psychology the application of equality seems unlikely. For example, school psychologists have long been concerned with psychologist-to-student ratios across the nation (Thomas, 1999). Is it reasonable to expect a child to receive the same quality of services in 1:3400 ratio school districts as opposed to a 1:950 ratio school district? To further examine the problem with the term equality, Beauchamp & Childress note that quality is only one of several approaches to "distributive

justice" and therefore would not be the defining characteristic of the moral imperative to maintain justice. Because the term equality is included within Principle D (Justice) which is an aspirational goal, one could argue that equality is simply something we aspire to achieve. However, this is not the intent of the aspirational principles; rather they still should be able to guide behavior, just with less precision than the enforceable standards. Therefore, in practice, psychologists may need to apply other principles to determine the *just* allocation of services such as based on need. Regardless of the method of distributive justice applied, the course of action should be unbiased. When interpreting qualifying modifiers in terms of eliminating injustice and inequity the psychologist should determine if there is action is fair, just and impartial.

The third purpose of modifiers is to "ensure applicability across the broad range of activities conducted by psychologists." The question here is whether or not the interpretation of a modifier is acceptable based on the individual psychologist's particular role or responsibility. Psychologists' roles and responsibilities over which the ethical code applies include their activities (e.g. counseling, teaching), persons with whom they work (e.g. individuals, families), settings (e.g. schools, hospitals), and communication contexts (e.g. face-to-face, Internet) (Fisher, 2003). This is consistent with the APA *Archival Definition of School Psychology* in which the contexts of school psychology practice are problems, populations, and procedures (APA, 1998). When interpreting a modifier, psychologists should ask how the specific modifier relates to specific modalities of their roles and responsibilities in which they are competent to practice.

The fourth purpose of modifiers is to "guard against a set of rigid rules that might be quickly outdated." Psychology is a developing field in which practices and research findings both wither and emerge. If the ethical code included specific practices it would be susceptible to

criticism for including potentially antiquated practices or for not including newly emerging evidence-based practices. Throughout the ethical code the modifier *current* is used to indicate that a course of action should be based on the most modern and evidence-based procedures, tests, or knowledge. For example, Standard 9.05 (Test Construction) requires that psychologists use "current scientific or professional knowledge for test design." This is a particularly useful modifier as we are witnessing the field of psychometrics moving from classical test theory to item response theory. When interpreting a modifier, psychologists should determine if the action is current and not outdated.

Modifies in Enforceable Standards

Several modifiers that appear frequently throughout the 2002 Ethics Code warrant attention particularly as they relate to school psychology practice. *Reasonable* is a frequent modifier and was introduced above. Fisher (2003) says the reasonable modifier has two purposes. It is used to prevent "idiosyncratic ethical judgments" and to guard against "unrealistic or unfair expectations of responsible conduct" (pp 14-15). For example, Standard 1.01 (Misuse of Psychologist's Work) states that psychologists "take reasonable steps to correct or minimize the misuse of" their work. Many school personnel have access to psychological evaluation results especially when they are discussed in a multidisciplinary evaluation meeting. Often school psychologists are unaware that a teacher or administrator has *reinterpreted* their evaluation findings after the fact to a parent or other stakeholder. Suppose the psychologist finds that this did happen, but the family has left the school district. How does the psychologist determine what is a *reasonable* effort to correct the teacher's statements? If there is no forwarding address information not much can be done, but if the address and phone number are readily available the psychologist should correct the misuse of his/her work. Another example is

found in Standard 2.01f (Boundaries of Competence) that states psychologists engaging in forensic activities become "reasonably familiar with the judicial or administrative rules." Reasonableness in this situation will be based on the role the psychologist plays in the evaluation. If the psychologist has a minor role, less facility with administrative rules is reasonable. On the other hand, if the psychologist is also acting as the special education administrator he/she should possess much greater knowledge.

As indicated above, *appropriate* typically is used to prevent injustice through determining the suitability of an action. *Appropriate* is also used to indicate the currently expected action. For example, Standard 3.10 (Informed Consent) states that psychologists must "obtain appropriate permission" to conduct psychological work. In the case of the school psychologist, permission for evaluation is outlined by state and federal laws. The only appropriate permission is the one authorized by the school district. So if a psychologist were to interpret *appropriate* in this case to mean a "good" permission form (handwritten with signatures), but different than is required, the psychologist would be making a faulty interpretation of the *appropriate* modifier. That is interpretation of *appropriate* did not require judgment, there is only one option.

The modifier *potentially* as applied in the ethical code requires some level of prediction or anticipation based on a portent. This modifier is only used twice in the 2002 Ethics Code and is related to anticipating multiple relationships. One way to apply this modifier is to be aware of common pitfalls for multiple relationships before they occur. However, if the multiple relationship was unforeseen then the action under review would not be considered unethical (Jacob & Hartshorne, 2003). Note the connection between unforeseen and potentially. The

ability to "see" the potentiality is much like judgment—what one would generally expect the psychologist to predict.

Relevant is used to indicate that important information with a connection to a decision be considered or included. Of its uses in the 2002 Ethics Code, the use of *relevant* in Standard 2.01c (Boundaries of Competence) is most applicable to school psychologists. It states that psychologists that plan to provide services to populations new to them must "undertake the relevant education, training, supervised experience, consultation, or study." An issue facing school psychology now is respecialization training. Haggan & Dunham (2002) point out that there are meaningful differences between clinical and school psychology training, but no established guidelines to define what is *relevant* training for respecialization. Therefore, the determination of whether or not a specific respecialization plan is relevant or not may be unfeasible because of a lack of "generally accepted" practices.

In the 2002 Ethics Code, *feasible* is used to indicate a timeline or magnitude, such as *as soon as feasible* or *to the extent feasible* respectively. *As soon as feasible* is used in Standard 10.01a (Informed Consent to Therapy) in which "psychologists inform clients/patients as early as is feasible in the therapeutic relationship about the nature and anticipated course of therapy." *To the extent feasible* is used in Standard 4.02 (Discussing the Limits of Confidentiality) in which psychologists must discuss limits of confidentiality, "to the extent feasible, [with] persons who are legally incapable of giving informed consent." *Attempt* is used four times in the code, and the most relevant instance for school psychologists has to do with resolving ethical conflicts (Standard 1.04 Informal Resolution of Ethical Violations) in which psychologists must "attempt to resolve the issue by bringing it to the attention of that individual." *To the extent feasible* and *attempt to* are similar modifiers in that attempts are limited by feasibility. One can gauge the

quality of an *attempt* based on whether or not the attempt was made *to the extent feasible*. For example, suppose a school psychologist needed to contact a parent to schedule an individualized education plan meeting. The psychologist then made a single phone call and found the phone disconnected. The psychologist could not claim that this was an *attempt* in the ethical sense of the word because there existed many feasible options, such mailing a letter or making a home visit, available to the psychologist. That is, the phone call would not be interpreted as an *attempt* because the psychologist's effort was not *to the extent feasible*.

Decision Making and Qualifying Modifiers

This section describes how to include the examination of modifiers in the process of ethical decision making. The 2002 Ethics Code provides some guidance with regard to ethical decision making, but only slightly more than was evident in the 1992 Ethics Code. The following was added to the Introduction and Applicability section:

> In applying the Ethics Code to their professional work, psychologists may consider other materials and guidelines that have been adopted or endorsed by scientific and professional psychological organizations and the dictates of their own conscience, as well as consult with others within the field. (Introduction and Applicability, APA, 2002)

As can be seen, the APA Ethics Code does not provide explicit direction or a model for ethical decision making, but it does endorse the use of established approaches from other sources. There are a variety of approaches to ethical decision making (Fisher, 2003; Jacob & Hartshorne, 2003), but there is no established gold standard. In fact, Jacob and Hartshorne warn that there is no empirical evidence that the use of a decision-making model improves decision

making. Although models for ethical decision making vary, it is important to understand what is at the its heart, namely *justification* for a course of action.

Beauchamp and Childress (2001) argue that that the justification for an ethical decision must be both *relevant* to the decision and *adequate* to justify the decision. They go on to explain that in making justifications for an ethical decision priority can be given to the ethical norms as described by the Principles, practical experiences as described by the Standards, or some combination of both. Typical models of ethical decision making apply the combined approach and have predictable components or steps.

Probably most familiar to school psychologists, is Jacob & Hartshorne's (2003) modification of Koocher and Keith-Spiegel's (1998) approach because their text is required in so many training programs. In this approach, the decision maker is asked to consider "broad ethical principles" and the rights of all affected parties. At the same time, one should consider specific legal guidelines and "district policies" (Jacob & Hartshorne, 2003, p. 21). Fisher (2003) discussed an approach to ethical decision making developed by integrating many different systems. In this approach, the decision maker should develop "a professional commitment to doing what is right" and become familiar with the APA general principles. On the other hand, the decision maker should gather "professional guidelines, state and federal laws, and organizational policies" (p. 244). From the theoretical concepts described by Beauchamp and Childress (2001) to the explicit examples prepared by Jacob and Hartshorne and Fisher, there is an intersection between general, aspirational goals and the specific, actual realities of ethical dilemmas faced by psychologists. At the center of this intersection are the interpretations of the qualifying modifiers. To inform ethical decisions the interpretations of these modifiers must be relevant and

adequate. In addition the interpretation should be in line with the aspirational principles and current beliefs and practices.

To achieve the four purposes of modifiers for ethical decision making their interpretation may include the following considerations:

1. When applying professional judgment psychologists should ensure that it is done so without undo influence and based upon established, generally-accepted scientific and professional knowledge.
2. To eliminate injustice and inequity psychologists should ensure that the course of action is fair, just and impartial
3. Psychologists should ask how a particular course of action relates to specific modalities of their roles and responsibilities in which they are competent to practice.
4. Psychologists should determine if the action is current and not outdated.

Case Example: Injustice and Inequity

The following is an examination of the justification for using language fair testing. Standard 9.02c (Use of Assessments) indicates that psychologists use assessment instruments "*appropriate* to the individual's language preference." Without the term *appropriate* an individual could be denied a language fair assessment rendering the evaluation invalid or even harmful (AERA, APA, & NCME, 1999). Principle A (Beneficence and Nonmaleficence) and Principle D (Justice) are the relevant aspirational goals informing this standard. Consider the decision to administer a nonverbal test of intelligence to a Hispanic child whose primary home language is other than English. This decision is made with the knowledge that there are intelligences tests available that are properly translated and normed in the child's primary language and would provide a broader (verbal and nonverbal) estimate of intellectual

functioning. This decision occurs frequently in the practice of school psychology for a variety of reasons. Maybe there is no evaluator available who speaks the child's primary language, maybe the district does not own the best test available, or maybe the psychologist's administrator wants a particular placement/outcome. All of these and other circumstances must be taken into consideration to determine whether the use of the nonverbal test is *appropriate*. To interpret the modifier in this case one would examine each of the four considerations above. First, is there undue influence in the decision to use the nonverbal test such as fiscal concerns? Is it the best assessment approach for children of diverse linguistic backgrounds based on generally-accepted practices? Second, will the use of the test result in a fair and just placement decision? Third, is the psychologist competent to evaluate individuals of diverse linguistic backgrounds and thus make a judgment about the appropriateness of the nonverbal test? Finally, is the use of the nonverbal test an outdated practice because of the introduction of well normed tests in the child's primary language? The use of the nonverbal test is only *appropriate* if it meets both the general Principles A and D and maintains the integrity of the specific modifier interpretations described above.

References

American Psychological Association. (1998). *Archival description of school psychology*. Retrieved, 2003, from the World Wide Web: http://www.apa.org/crsppp/schpsych.html

American Psychological Association. (2002). *Ethical Principles of Psychologists and Code Of Conduct*. Retrieved December 15, 2002, from the World Wide Web: http://www.apa.org/ethics

Beauchamp, T. L., & Childress, J. F. (2001). *Principles of biomedical ethics* (5th Edition ed.). New York: Oxford University Press.

Elias, C. (1999). The school psychologist as expert witness: Strategies and issues in the courtroom. *School Psychology Review*, 28, 44-59.

Fisher, C. B. (2003). *Decoding the ethics code: A practical guide for psychologists*. Thousand Oaks, CA: Sage Publications.

Haggan, D., & Dunham, M. (2002). Non-doctoral respecialization as a school psychologist. *Trainer's Forum*, 21(4), 5-6, 10.

Jacob, S., & Hartshorne, T. S. (2003). *Ethics and law for school psychologists* (4th ed.). Hoboken, NJ: John Wiley & Sons.

Koocher, G., & Keith-Spiegel, P. (1998). *Ethics in psychology* (2nd ed.). New York: Oxford.

Nagy, T. F. (1999). *Ethics in plain English: An illustrative casebook for psychologists*. Washington, DC: American Psychological Association.

Thomas, A. (1999). School psychology 2000. *Communiqué*, 28(2), 28.

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